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NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA DEPARTMENT OF  
TOXIC SUBSTANCES CONTROL,

Plaintiff,

v.

BAY AREA DRUM COMPANY, INC.; DAVID H.  
CANNON; HSCM-20; and THE GLIDDEN  
COMPANY,

Defendants.

C02-1886 PJH

DECLARATION OF  
BARBARA J. COOK IN  
SUPPORT OF THE MOTION  
OF THE CALIFORNIA  
DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
FOR JUDICIAL APPROVAL  
OF SETTLEMENT  
AGREEMENT AND  
CONSENT DECREE  
PURSUANT TO 42 U.S.C.  
SECTION 9613(f)

Date: September 10, 2003  
Time: 9:00 a.m.  
Courtroom: The Hon. Phyllis J.  
Hamilton

I, BARBARA J. COOK, declare as follows:

1. I am a registered civil engineer in the State of California. I am currently employed by the State of California Department of Toxic Substances Control ("DTSC"). DTSC is the agency responsible under California law for determining whether there has been a release or threatened release of a hazardous substances into the environment, and for determining what actions must

1 be taken in response to such a release or threatened release. DTSC is the successor to the Toxic  
2 Substances Control Program of the California Department of Health Services ("DHS"). DTSC  
3 and DHS are collectively referred to as DTSC in this declaration.

4 2. Since 1991, I have been employed as the Chief of DTSC's Northern California-Coastal  
5 Cleanup Operations Branch. In that position, I am responsible for all activities conducted by  
6 DTSC in response to the release or threatened release of hazardous substances in the San  
7 Francisco Bay Area and in the counties of California's north coast. Since 1982, DTSC has  
8 conducted environmental removal and remedial activities in response to the release and or  
9 threatened release of hazardous substances at, beneath and migrating from real property located  
10 at 1212 Thomas Avenue, San Francisco, California (the "Property"). The Property, and all the  
11 places where hazardous substances released at or from the Property have come to be deposited,  
12 are collectively referred to as the "Site" in this declaration. As the Chief of DTSC's Northern  
13 California-Coastal Cleanup Operations Branch, I am responsible for all activities conducted by  
14 DTSC in response to the release and/or threatened release of hazardous substances at the Site. I  
15 make this declaration in that capacity.

16 3. The facts set forth in this declaration are true and correct of my own knowledge. If  
17 called as a witness herein, I could and would competently testify to them.

18 4. Since 1991, DTSC has investigated the history of the Property and, in particular, the  
19 industrial and commercial activities that have taken place at the Property during the past 55  
20 years. DTSC examined public records that document the ownership of the Property, and the uses  
21 to which the Property has been put. In addition, DTSC has interviewed a number of the former  
22 operators of the Property, and their employees, including defendant David Cannon ("Cannon").  
23 DTSC has also examined the written records of a number of the persons and entities that  
24 operated drum reconditioning businesses on the Property.

25 5. As a result of its investigation of the Property's history, DTSC has determined that the  
26 Property was operated as a drum reconditioning facility from 1948 until 1987. The various drum  
27 reconditioning businesses that operated at the Property received drums containing residues of  
28 aqueous waste, organic chemicals, acids, oxidizers, oils, paints and varnishes from a variety of

1 establishments. As part of the reconditioning process, the drums were flushed and recoated. As  
2 a result, the residual contents of the drums, as well as reconditioning chemicals, were released at  
3 and from the Property. Ultimately, the residual contents and reconditioning chemicals released  
4 at and from the Property were released to the soil of the Property, to the soil of parcels of land  
5 adjacent to the Property, and to ground water beneath and migrating from the Property.

6 6. In the course of its investigation of the Property's operating history, DTSC also learned  
7 that Bay Area Drum Company, Inc. ("BAD") was organized in 1980, and acquired the Property  
8 the same year. Cannon was the President of BAD. From 1980 to 1982, Cannon owned 50% of  
9 the stock of BAD; in 1982, he acquired the other 50% of the stock of BAD. In 1984, BAD sold  
10 the Property to its current owners. BAD and Cannon continued to operate a drum reconditioning  
11 business on the Property until 1987.

12 7. DTSC inspectors observed releases of hazardous substances at the Property during the  
13 time that BAD owned, and BAD and Cannon operated, a drum reconditioning business there. In  
14 or about December 1983, the San Francisco Department of Public Health and DTSC inspected  
15 the Property. During the December 1983 inspection, Cannon stated that BAD reconditioned  
16 drums for reuse. Cannon stated, further, that the drums reconditioned by BAD were not rinsed or  
17 otherwise decontaminated prior to being collected by BAD personnel. During the December  
18 1983 inspection, several hundred drums awaiting reconditioning were stored in the outdoor yard  
19 of the Property. Some of those drums were stacked as high as 15 feet. Many of the drums bore  
20 hazardous waste labels. Behind some of the drums, and adjacent to the process building then  
21 located on the Property, the San Francisco Department of Public Health and DTSC inspectors  
22 observed a large sump. Run-off from the drum yard, and from inside the process building, led  
23 into the sump. Samples taken of the run-off from the drum yard to the sump, of the run-off from  
24 the process building to the sump, and of the material in the sump, all revealed elevated levels of  
25 hazardous substances.

26 8. The observed release of hazardous substances at the Property in 1983 prompted an  
27 investigation of the contamination at, beneath and migrating from the Property. In the course of  
28 the ensuing sampling, more than 70 different types of hazardous substances were detected in the

1 ground water beneath and/or the soil of the Site. Seventeen different hazardous substances were  
2 detected in the soil of the Property's process building in concentrations that rendered them  
3 hazardous wastes, or potential hazardous wastes, under California law. One hazardous  
4 substance, moreover, was detected in the Site's ground water in a concentration that posed a risk  
5 to aquatic organisms in nearby San Francisco Bay.

6 9. DTSC has conducted and supervised extensive removal and remedial activities in  
7 response to the release of hazardous substances at the Site. Between 1983 and 1993, DTSC  
8 conducted an initial investigation of the contamination at the Property, an expedited response  
9 action at the Site (entailing, among other things, the partial removal of hazardous substance-  
10 contaminated soil and stored waste material from the Property, and the partial removal of  
11 contaminated soil from residences and a vacant lot adjacent to the Property), and the further  
12 investigation of the continued presence of hazardous substances in Site soil and ground water.  
13 Beginning in 1993, DTSC supervised the investigation of the contamination at the Site  
14 conducted by a group of entities (the "Group") that had sent (or were the successors to, or were  
15 responsible for the liabilities of, entities that had sent) drums to the Property for reconditioning.  
16 Between 1993 and 2000, the Group, acting under DTSC's supervision, among other things,  
17 conducted flux-chamber air sampling and ground water sampling at the Site, and conducted a  
18 remedial investigation and a feasibility study for the Site.

19 10. In 1998, DTSC reviewed and approved (with modifications), a Final Removal Action  
20 Work Plan developed by the Group for the residential backyards that adjoin the Property. In  
21 1999 and 2000, DTSC reviewed and approved (with modifications), a Final Remedial  
22 Investigation Report for the Site developed by the Group. In 2000, DTSC reviewed and  
23 approved (with modifications), a Final Feasibility Study/Remedial Action Plan for the Site  
24 developed by the Group. In 2001, acting under DTSC supervision, the Group implemented the  
25 approved Final Removal Action Work Plan for the residential backyards that adjoin the Property,  
26 and the Final Remedial Action Plan for the Site. The Group, among other things, remediated the  
27 soil of the Site, removing approximately 7,000 cubic yards of contaminated soil from the Site.

28 11. DTSC has incurred more that \$5.31 million in costs with connection with the Site. To

1 date, DTSC has recovered approximately \$2.84 million of those costs.

2 I declare under penalty of perjury of the laws of the United States of America that the  
3 foregoing is true and correct.

4 Executed this 30 day of June, 2003, at Berkeley, California.

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8 BARBARA J. COOK  
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